

**MINUTES OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE**
Tuesday, April 6, 2004 – 9:00 a.m. – Room 305 State Capitol

Members Present:

Sen. Howard A. Stephenson, Senate Chair
Rep. David Ure, House Chair
Sen. Mike Dmitrich
Sen. Michael G. Waddoups
Rep. Judy A. Buffmire
Rep. Greg J. Curtis
Rep. James R. Gowans
Rep. Merlynn T. Newbold

Members Absent:

President Al Mansell
Sen. Ed Mayne

Staff Present:

Mr. Arthur L. Hunsaker, Policy Analyst
Ms. Susan Creager Allred, Associate General Counsel

Note: A list of others present and a copy of materials can be found at www.le.utah.gov or by contacting the committee secretary, Tracey Fredman, at 538-1032. A recording of the meeting may also be available from the Office of Legislative Research and General Counsel.

1. Committee Business

Chair Ure called the meeting to order at 9:14 a.m. Senator Mayne and President Mansell were excused from the meeting.

MOTION: Representative Newbold moved to approve the minutes of the January 7, 2004 meeting. The motion passed unanimously with Rep. Curtis absent.

2. R746-331 Determination of Exemption of Mutual Water Corporations

Chair Stephenson introduced the issue. Ric Campbell, Public Service Commission, presented the case law that was the foundation for allowing the Public Service Commission to determine whether a Water Corporation was within its jurisdiction, and said he would welcome clarifying legislation. He distributed a handout "R746-331 Determination of Exemption of Mutual Water Companies." Rep. Gregory Hughes attended the meeting and explained his concerns with the rule. Chair Ure and Chair Stephenson asked clarifying questions.

MOTION: Chair Stephenson moved that the Committee urge Mr. Campbell and Rep. Hughes to work on a resolution of the issue and present their recommendations for legislative changes in the 2005 General Session to the Committee by November 2004. Discussion followed. The motion passed unanimously.

3. Discussion: Changing an Agency's Longstanding Interpretation of a Statute by Rule

Chair Stephenson introduced the issue. Bruce Johnson, Utah State Tax Commission, cited several instances in which the Tax Commission has felt that it was appropriate to alter or reverse its interpretation of a statute by rule. He also indicated that there are times when the Tax Commission seeks statutory clarification rather than a rule change.

Mr. Mark Buchi, Attorney, Holme, Roberts, and Owen, and Kent Bishop, Governor's Office of Planning and Budget, spoke to the issue.

4. Licensing Questionnaires -- Inquiries into an Applicant's Criminal History

Sen. Stephenson introduced the issue. Laura Poe, Assistant Director, Division of Occupational and Professional Licensing, distributed two documents, "Extract from the Division of Occupational and Professional Licensing Act Rules" and "Extracts from the Division of Occupational and Professional Licensing Act."

Ms. Poe explained that each question a potential licensee must respond to regarding criminal history is derived from statute. If a potential licensee is denied a license due to a response to a criminal history inquiry, the specific statutory language is cited so the applicant knows the statutory origin for the license denial. Mr. Ray Walker and Mr. Craig Jackson, Division of Occupational and Professional Licensing, Mr. Ken Hansen, Director, Division of Administrative Rules, Mr. Kent Bishop, and committee members participated in the discussion.

The Division will return in 60 days to report on the Committee's concerns about specific questions. Staff was directed to look at licensing statutes to see if each profession is held to the same standards.

5. Committee Business

Rep. Ure announced that future committee meetings are scheduled for Tuesday, April 20 and May 4, 2004 at 9:00 a.m. Mr. Hunsaker reported that S.B. 22, Administrative Rules Reauthorization, passed with no administrative rules sunsetted. Ms. Allred reported on the progress of the State Office Education in making rules to implement certain legislation.

6. Adjourn

MOTION: Sen. Waddoups moved to adjourn. The motion passed unanimously.

Chair Ure adjourned the meeting at 11:20 a.m.